

HINDU CODE BILL

SECTION II
THE DRAFT HINDU CODE BILL
BY
DR. B. R. AMBEDKAR ALONG WITH THE THEN EXISTING HINDU
CODE AS
AMENDED BY THE SELECT COMMITTEE

NOTE

Continued...

(128)

Part II, sec. 14, page 9.

107. Division of shares among heirs.—(1) Where a Hindu woman dies intestate leaving husband and children, the property of which she dies intestate shall be divided among her husband and children so that they share equally.

(2) Where a Hindu woman dies intestate leaving children but no husband, the property of which she dies intestate shall be divided among the children, so that they share equally.

(3) If any child of a Hindu woman dying intestate has died in her life time, leaving children alive at the time of her death, the children of such child shall take the share which such child would have taken if living at the intestate's death.

(129)

108. Husband succeeds where no children.—Where a Hindu woman dies Intestate leaving husband but no children, including children of any predeceased child entitled to succeed under section 107, the property of which she dies intestate shall devolve upon the husband.

(130)

(131)

109. Other heirs of the woman's property.—Where a Hindu woman dies leaving no heirs specified in section 107 or 108, then the property of which she dies intestate shall devolve upon the following heir in the order named hereunder, namely,—

(1) mother, father:

(2) husband's heirs, in the same order and according to the same rules as would have applied, if the property had been his and he had died intestate in

respect thereof immediately after his wife;

(3) mother's heirs, in the same order and according to the same rules as would have applied, if the property had been hers and she had died intestate in respect thereof immediately after her daughter;

(4) father's heirs, in the same order and according to the same rules as would have applied, if the property had been his and he had died intestate in respect thereof immediately after his daughter.

Part II sec. 14, page 2.

109. Other heirs of the woman's property.—Where a Hindu woman dies leaving no heirs specified in sections

107 or 108, then the property of which she dies intestate shall devolve upon the following heir in the order named hereunder, namely:—

(1) in other, father;

(2) husband's heirs, in the same order and according to the same rules as would have applied, if the property had been his and he had died intestate in respect thereof immediately after his wife;

(3) mother's heirs in the same order and according to the same rules as would have applied, if the property had been hers and she had died intestate in respect thereof immediately after her daughter;

(4) father's heirs, in the same order and according to the same rules as would have applied if the property had been his and he had died intestate in respect thereof immediately after his daughter.

(131)

(132) *Succession to the property of female Marumakkattayis, etc.*

109A. Rules of succession to Marumakkattayam or Aliyasantana female dying intestate.—Notwithstanding anything contained in this Part, the separate or self-acquired property of a female Hindu, who if this Code had not been passed would have been governed by the Marumakkattayam or Aliyasantana law shall, if she dies intestate in respect thereof, devolve in the order and according to the rules specified below, namely:—

(a) where the intestate has left her surviving a lineal descendant or descendants, the whole of such property shall devolve on such descendant or descendants in accordance with the provisions contained in clauses (a) to (e) of section 105D;

(b) in the absence of any lineal descendant of the intestate, the whole of the property shall devolve on the intestate's mother or, in her absence, on her lineal descendant or descendants;

(c) where the intestate has not left her surviving any lineal descendant of herself or of her mother but has left her husband and her maternal grandmother or her lineal descendant or descendants, one-half of the property shall

devolve on her grand-mother or, in her absence, on her lineal descendant or descendants;

(d) in the absence of the intestate's maternal grand-mother and her lineal descendants, the whole of the property shall devolve on the intestate's husband, and in the absence of the husband, the whole of the property shall devolve on her maternal grand-mother or her lineal descendant or descendants, as the case may be;

(e) where the intestate has not left her surviving any of the heirs mentioned in the forgoing clauses, the whole of the property shall devolve on her mother's maternal grand-mother or in her absence on her lineal descendant or descendants and, in the absence of any one descendant, on a remoter female ascendant in the female line or, in her absence, on her lineal descendant or descendants, the nearer ascendant and her descendants excluding the more remote ascendants and her descendants ;

(f) the distribution of the intestate's property or any share thereof to which two or more lineal descendants of her mother or other ascendant are entitled under the foregoing clauses shall be made in accordance with the rules specified in clauses (a) to (e) of section 105D, as if the mother or other ascendant had died intestate in respect of such property or shall leaving her surviving the descendants aforesaid.

(133)

109B. Rules of succession to Nambudri female dying intestate.— Notwithstanding anything contained in this Chapter, the separate or self-acquired property of a female Hindu who, if this Code had not been passed, would have been governed by the Nambudri law, shall, if she dies intestate in respect thereof, devolve in the order, and in accordance with the rules, specified below, namely :—

(a) where the intestate has left her surviving any lineal descendant or descendants, the whole of the property shall devolve on such descendant or descendants in accordance with the rules specified in clause (a) to (c) of section 105D.

(b) in the absence of any lineal descendant, the property shall devolve on her husband;

(c) in the absence of the husband, the property shall devolve upon the heirs in the order, and in accordance with the rules, specified in section 109.

(134) *Succession to the property of a hermit*

110. Rules for hermits, etc.—(1) Where a person completely and finally renounces the world by becoming a hermit or an ascetic or a perpetual religious student his property shall devolve upon his heirs, in the same order

and according to the same rules as would have applied if he had died intestate in respect thereof at the time of such renunciation.

(2) Any property acquired by such a person after his renunciation shall devolve on his death, not upon his relatives, but as follows:

(a) In the case of a hermit upon a spiritual brother belonging to the same hermitage;

(b) In the case of an ascetic subject to any custom or usage governing the case, upon his virtuous disciple; and (c) In the case of a perpetual religious student, upon his preceptor.

Succession to the property of a hermit Part sec. II, page 9.

110. Rules for hermits, etc.—(1) Where a person completely and finally renounces the world by becoming a hermit or an ascetic or a perpetual religious student his property shall devolve upon his heirs, in the same order and according to the same rules as would have applied if he had died intestate in respect thereof at the time of such renunciation.

(2) Any property acquired by such a person after his renunciation shall devolve on his death, not upon his relatives, but as follows:—

(a) In the case of a hermit upon a spiritual brother belonging to the same hermitage,

(b) In the case of an ascetic subject to any custom or usage governing the case, upon his virtuous disciple; and (c) In the case of a perpetual religious student, upon his preceptor.

(134)

(135) *General provisions relating to succession*

III. Full blood preferred to half blood.—Heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect.

(136)

112. Mode of succession of two or more heirs.—If two or more heirs succeed together to the property of an intestate, they shall take the property—

(a) save as otherwise expressly provided in this Part, *per capita* and not *per stripes*; and (b) as tenants-in-common and not as joint tenants.

(b) (137)

113. Right of child in womb.—A person who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate. The inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate.(138)

114. Presumption of survivorship.—Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived the other then, for all purposes affecting succession to property, it shall be presumed, until the contrary is proved, that the younger survived the elder.

General provisions relating to succession

Part II, page 10

III. Full blood preferred to half blood.—Heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect. *Illustration*

(i) A brother by full blood is preferred to a brother by half blood; but a brother by half blood succeeds before a brother's son by full blood, a brother being a nearer heir than a brother's son.

(ii) A paternal uncle by half blood is preferred to a paternal uncle's son by full blood, an uncle being a nearer heir than an uncle's son.

(iii) A full brother's daughter's is preferred to a half brother's daughter's daughter but the former is not preferred to a half brother's daughter's son, as the nature of the relationship is not the same in the two cases. *The latter, who is a nearer heir by virtue of rule 4 in section 104 is preferred although he is only related by half blood.*

(135) Part II sec. 24, page II.

112. Mode of succession of two or more heirs.—If two or more heirs succeed together to the property of an intestate, they shall take the property—

(a) save as otherwise expressly provided in this Part, *per capita* and not *per stripes* ; and (b) as tenants-in-common and not as joint tenants.

(136)

113. Right of child in womb.—A person who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate. The inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate.

(137) Part III-A, sec.16, page 14.

114. Presumption of survivorship.—Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived the other then, for all purposes affecting succession to property, it shall be presumed, until the contrary is proved, that the younger survived the elder.

(138)

(139)

115. Application of Partition Act, 1893, in certain cases.—Where, after the commencement of this Code, a share in any immovable property of an intestate or in any business carried on by such intestate, whether solely or in conjunction with other,—

(a) devolve upon one or more of the intestate's son, son's son, son's son's son, together with other relatives, and one of the heirs sues for partition, or

(b) devolves upon a daughter, together with any of the male relatives specified in Class I of the Eighth Schedule, and any one of such male relatives compels the daughter to take her share of the property of the intestate for separate enjoyment (which he is hereby empowered to do), the provisions of the Partition Act, 1893 (IV of 1893) shall apply as if there was a partition and as if he or she were the transferee of a share of a dwelling house and the intestate's family were an undivided one.

(140)

Disqualification of heirs

116. Hermit, etc., disqualified.—A person who has completely and finally renounced the world in any of the modes set forth in sub-section (1) of section 110 shall be disqualified from inheriting the property of any of his relatives by blood, marriage or adoption.

(141)

117. Unchaste wife disqualified.—A woman, who after marriage, has been unchaste during her husband's lifetime, shall, unless he has condoned the unchastity, be disqualified from inheriting his property:

Provided that the right of a woman to inherit to her husband shall not be questioned on the above ground, unless a Court of law has found her to have been unchaste as aforesaid in a proceeding to which she and her husband were parties and in which the matter was specifically in issue, the finding of the Court not having been subsequently reversed.

(142)

118. Disqualification of certain widows remarrying.—The widow of a predeceased son, the widow of a predeceased son of a predeceased son, the father's widow and the brother's widow shall not be entitled to succeed as heirs, if on the date the succession opens, they have remarried.